

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:06CV54-1-MU

KENNETH PATTON,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

ORDER

THIS MATTER comes before the Court upon the Petitioner's Motion to Hold Case in Abeyance, filed August 3, 2006.

On April 19, 2006, Petitioner filed a federal habeas petition. This Court ordered Respondent to respond to Petitioner's federal habeas petition. On July 10, 2006, Respondent responded by asserting that Petitioner's federal habeas petition is untimely. On July 14, 2006, the Court sent the Petitioner an Order in compliance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975). In this Order, the Court notified the Petitioner that the Respondent had filed a Motion for Summary Judgment and that Petitioner had twenty days in which to respond to this motion. On July 26, 2006, Petitioner requested an extension of time in which to respond to Respondent's Motion for Summary Judgment. This Court granted Petitioner's motion and his response date was set for August 23, 2006. Petitioner has filed the present motion asserting that it has come to his attention that he did not fully exhaust all of his federal habeas claims and he would like the Court to hold his case in abeyance or dismiss it without prejudice to allow him to

return to state court to exhaust his state court remedies.

Petitioner does not argue, and this Court believes he has no basis for doing so, that returning to state court and exhausting his state court remedies would render his federal habeas petition timely. Consequently, this Court denies Petitioner's Motion to Hold Case in Abeyance.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion to Hold Case in Abeyance is **DENIED** and Petitioner has until August 28, 2006, in which to respond to Respondent's Motion for Summary Judgment.

Signed: August 21, 2006

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

